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(24)

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. (S) No. 5887 of 2007

PETITIONER Girdhari Lal Chandrawanshi,
S/o Shri Baram Singh Chandrawanshi,
Aged about 43 years,
R/o Village Mohera, Tehsil Kurud,
District Dhamtari (C.G.)

Versus

RESPONDENTS

1. State of Chhattisgarh,
Through the Secretary,
Government of Chhattisgarh,
Department of Scheduled Tribe and Scheduled Caste
Development D.K.S. Bhawan,
Mantralaya Raipur (C.G.)
2. The Secretary,
Government of Chhattisgarh,
Department of School Education
D.K.S. Bhawan, Mantralaya,
Raipur (C.G.)
3. The Commissioner,
Department of Scheduled Tribe and Scheduled Caste Development,
Pt. R.S.U . Campus Raipur (C.G.)
4. The Additional Director,
Department of Scheduled Tribe and Scheduled Caste Development,
Raipur (C.G.)
5. Block Education Officer,
Mainpur, District Raipur (C.G.)
6. Bhanuram Ratre,
Assistant Teacher,
C/o Block Education Officer,
Mainpur, District Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Appearance:

Shri Shyam Tekchandani, Counsel for the petitioner.

Ms. Sunita Jain, Panel Lawyer for the State/respondents No.1 to 5 on advance copy.

ORAL ORDER
(05.10.2007)

SUNIL KUMAR SINHA, J

Heard finally with the consent of the parties.

The petitioner, who is working on the post of Assistant Teacher, has challenged the legality, validity and proprietary of

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the order dated 19/7/2007 (Annexure P/1) passed by the Additional Director, Tribal Development Department, Raipur (C.G.). According to the said order, inter-departmental transfer on mutual basis has been allowed by the Government. The said order says that the petitioner, who is working at *Ashram Shala Badegobra*, Block Mainpur, District Raipur (C.G.) will go in place of respondent No.6, who is working in Primary School, Jadjada, Block Gariyaband , District Raipur. Vide para 2 of the order, it has been mentioned that the seniority of the persons going on inter-departmental transfer shall be maintained on the basis of date of joining in the respective department and the persons so joining shall be kept at the bottom of their cadre. It has been very specifically mentioned in para 3 that if the aforesaid conditions are acceptable to the persons, then only, they should be relieved. It has further been mentioned vide para 4 itself that if the conditions are not acceptable to the persons, the order of inter-departmental transfer shall be deemed to be cancelled.

Learned counsel for the petitioner submits that the above conditions pertaining to the seniority were not acceptable to the petitioner, therefore, he filed a representation vide Annexure P/3 before the concerned authority with copies to other authorities and prayed for passing an expressed order of cancellation of transfer, but no order has been passed on his representation so far and he has been relieved ex-parte vide order dated 09.08.2007 (Annexure P/2). Learned counsel further submits that when the conditions were not acceptable to the petitioner and he has filed a representation, he should not have been relieved ex-parte from his present place of posting.

I have heard learned counsel for the petitioner at length and have also perused the records of the petition.

Admittedly, the order (Annexure P/1) is a conditional order, in which, there are conditions as aforementioned and it has very specifically been mentioned in the order that if the conditions are not acceptable to a person, the order shall be held to be cancelled for him.

In view of the above fact that when the conditions regarding seniority were not acceptable to the petitioner and he has filed a representation, certainly, he should not have been relieved from his present place of posting.

Accordingly, in view of the contents of the order dated 19/7/2007, this petition is finally disposed of with a direction that the representation filed by the petitioner before the concerned authority vide Annexure P/3 shall be disposed of by it within a period of 30 days from the date of filing of certified copy of this order and a copy of this writ petition and the outcome of the representation shall be communicated to the petitioner.

It is further directed that in view of the clear cut provisions in the impugned order itself, the petitioner shall not be sent to the transferred place and he be allowed to continue at *Ashram Shala* Badegobra, Block Mainpur, District Raipur (C.G.) till the decision of the representation.

The petitioner shall be obliged to file this order and above documents within a period of 15 days from today.

Sd/-
Sunil Kumar Sinha
Judge

Shyna